

United States
Circuit Court of Appeals ⁷
For the Ninth Circuit.

C. F. PETERSON,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the Territory of Alaska,
Third Division.

FILED

JAN 24 1924

F. D. MONOKTON,
CLERK.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

SHERMAN DUGGAN, United States Attorney,
and His Assistants, H. G. McCAIN, of Cor-
dova, Alaska, and JULIEN A. HURLEY, of
Anchorage, Alaska,

Attorneys for Plaintiff and Defendant in
Error.

L. V. RAY, of Seward, Alaska,

Attorney for Defendant and Plaintiff in
Error. [1*]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON,

Defendant.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court.

You will please prepare, authenticate and certify for filing in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, upon the writ of error heretofore issued in the above-entitled cause, the following papers, pleadings and records on file in said case, to wit:

*Page-number appearing at foot of page of original certified Transcript of Record.

1. This praecipe.
2. Bill of exceptions.
3. Order settling and certifying bill of exceptions.
4. Assignment of errors.
5. Petition for writ of error.
6. Order allowing writ of error and fixing amount of bond, which shall act as a supersedeas.
7. Appearance bond upon writ of error (approved).
8. Cost bond upon writ of error (approved).
9. Writ of error.
10. Citation on writ of error (original).
11. Citation on writ of error (served copy).

Dated at Valdez, Alaska, this 2d day of November, 1923.

L. V. RAY,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Div. November 3, 1923.
W. N. Cuddy, Clerk. [2]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Notice of Presentation of Bill of Exceptions for Settlement and Certification.

To Honorable SHERMAN DUGGAN, United States Attorney for the Territory of Alaska, Third Division:

PLEASE TAKE NOTICE that the undersigned, as attorney for the defendants C. F. Peterson and Clinton Maelhorn, will on the 24th day of February, 1923, at the hour of ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, present to the Court for settlement and certification the defendants' bill of exceptions in the above-entitled case, a copy of which bill of exceptions is attached hereto and herewith served upon you.

Dated at Valdez, Alaska, this 17th day of February, 1923.

L. V. RAY,
Attorney for the Defendants.

Service of a true copy of the above notice of presentation of bill of exceptions for settlement and certification acknowledged this 19th day of February, 1923.

SHERMAN DUGGAN.
United States Attorney. [3]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Bill of Exceptions.

Comes now C. F. Peterson, one of the above-named defendants, and being about to prosecute to the United States Circuit Court of Appeals for the Ninth Circuit, a writ of error upon the judgment made and entered by the above-named District Court on the 15th day of December, 1922, in said cause, as against the said defendant C. F. Peterson, prays an order of said District Court, or of the Honorable E. E. Ritchie, Judge thereof who presided at the trial of said cause and who made and entered said judgment aforesaid, that this bill of exceptions containing the following named papers, pleadings, proceedings, and exceptions in said cause, be filed, settled and certified to as said defendant's C. F. Peterson, bill of exceptions upon said writ of error, to wit:

1. Complaint.
2. Warrant.
3. Transcript docket entries Justice's court containing judgment and sentence therein.
4. Notice of appeal.

5. Undertaking on appeal.
6. Certificate of Justice.
7. Transcript of testimony and proceedings at trial.
8. Verdict.
9. Motion in arrest of judgment.
10. Minute order denying motion in arrest of judgment.
11. Judgment and sentence.
12. Bail bond pending writ of error.

True, full and correct copies of all of said papers, pleadings, proceedings and exceptions are hereto attached, and are, by reference herein, inserted in this bill of exceptions.

The defendant, C. F. Peterson, prays that the judgment and sentence of said District Court rendered and pronounced against him on December 15th, 1922, in said cause, may be reversed.

Dated at Seward, Alaska, this 17th day of February, 1922.

L. V. RAY,

Attorney for Defendant, C. F. Peterson. [4]

In the United States Commissioner's Court for
Knik Precinct, Third Division, Territory of
Alaska.

No. —.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON and CLINTON MAELHORN,

Complaint for the Violation of Section 1, Act of Congress Approved February 14th, 1917, Known as the Alaska Dry Law.

(Filed August 12, 1922.)

C. F. Peterson and Clinton Maelhorn are accused by C. W. Mossman, Deputy United States Marshal for the Third Division of the Territory of Alaska, in this complaint of the crime of having intoxicating liquor in their possession, committed as follows.

The said C. F. Peterson and Clinton Maelhorn, on the 20th day of July, A. D. 1922, in Knik Precinct, in the Territory of Alaska and within the jurisdiction of this Court, then and there being, did then and there wilfully and unlawfully have in their possession intoxicating liquor, to wit, whiskey, commonly called "white mule," in violation of the provisions of the Act of Congress, approved February 14th, 1917, commonly known as the Alaska Dry Law, contrary to the form of the statutes in such case made and provided, and against the peace and dignity of the United States of America.

C. W. MOSSMAN.

United States of America,
Territory of Alaska,—ss.

I, C. W. Mossman, being first duly sworn, upon oath depose and say that the foregoing complaint is true; and that I am a Deputy United States Marshal for the Third Division of the Territory of Alaska.

C. W. MOSSMAN.

Subscribed and sworn to before me this 24th day of July, 1922.

[Seal]

W. H. RAGER,

U. S. Commissioner and *Ex-Officio* Justice of the Peace. [5]

In the United States Commissioner's Court for the Territory of Alaska, Third Division, at Anchorage.

United States of America,
Territory of Alaska,—ss.

Writ of Error.

Filed July 24, 1922.

The President of the United States of America to the Marshal of the Third Division of the Territory of Alaska, or His Deputy, GREETING:

We command you to apprehend forthwith *F. C.* Peterson and Clinton Maelhorn who is named in a complaint made an oath before me this 24th day of July, A. D. 1922, by *C. W.* Mossman if they be found in said district for the crime of having intoxicating liquor in their possession as is more particularly set forth in said complaint, and bring them before me to answer said complaint, and be further dealt with as the law directs.

HEREOF FAIL NOT and make return of this writ with your doings thereon.

Given under my hand and seal at Anchorage, this
24th day of July, 1922.

[Seal] W. H. RAGER,
United States Commissioner and *Ex-Officio* Justice
of the Peace. [6]

In Commissioner's Court.

Before W. H. RAGER, Commissioner and *Ex-Officio* Justice of the Peace.

No. 973.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

JULIAN A. HURLEY, Attorney for Plaintiff.

JAMES TRUITT and L. V. RAY, Attorneys for
Defendant.

(Filed as of August 12, 1922.)

July 24, 1922. Complaint in writing verified by
C. W. Mossman charging above-
named defendant with crime of
having intoxicating liquor in his
possession—filed.

July 24, 1922. Warrant of arrest issued and de-
livered to the U. S. Marshal for
execution.

July 24, 1922. Marshal returned said warrant of
arrest endorsed as follows: "The

within writ came to hand July 24, 1922, and I executed same by arrest of the within named defendants and now produce them in Court.

H. P. SULLIVAN,
U. S. Marshal,
By C. W. Mossman,
Deputy."

July 24, 1922. Bail Bond as to defendant C. F. Peterson in sum of \$1000.00 with Fred Wright and P. O. Sundberg as sureties, approved and filed.

July 24, 1922. Bail Bond as to defendant Clinton Maelhorn in the sum of \$1000.00, with Fred Wright and P. O. Sundberg as sureties approved and filed.

July 31, 1922. Defendants in court—Complaint read to defendants, said defendants and each of them put in his plea of "not guilty" to said complaint.

July 31, 1922. By agreement case set for August 11, 1922, at 2:30 P. M.

Aug. 11, 1922. All parties present, including the above-named defendants: a jury having been expressly waived, cause being tried before the court without a jury. Request of L. V. Ray, Esq., attorney for defendants, for continuance, denied.

Witnesses for the Government sworn and testified, C. W. Mossman and Chas. Watson. After hearing the evidence in the case and argument of counsel and being fully advised the Court finds the said defendants C. F. Peterson and Clinton Maelhorn have been proven guilty of the Crime charged in the said complaint, and the Court adjudged said Defendants C. F. Peterson and Clinton Maelhorn, and each of said defendants guilty of the crime charged in said complaint, to wit: crime of having intoxicating liquor in their possession. Said defendants and each of them waiving time for pronouncing sentence and consenting that sentence be forthwith pronounced against said defendants, the Court rendered and entered Judgment of Conviction as follows: The above-named defendants C. F. Peterson, and Clinton Maelhorn, having been brought before me, W. H. Rager, a commissioner and *Ex-Officio* Justice of the Peace, in a criminal action for the crime of having intoxicating liquor in their possession, in violation of

Act of Congress approved February 14, 1917, and the said C. F. Peterson and the said Clinton Maelhorn having thereupon pleaded "Not guilty" and been duly tried by me and upon such trial duly convicted, I have adjudged that said C. F. Peterson be imprisoned in the Federal Jail at Anchorage, Alaska, for a period of Nine (9) months and and that he [7] pay a fine of Nine Hundred Dollars, and further that C. F. Peterson be imprisoned in the Federal Jail at Anchorage, Alaska, until such fine be satisfied; said imprisonment not to exceed one (1) day for every Two Dollars (2.00) of such fine; and that said C. F. Peterson serve one day for every two dollars of such fine of \$900.00 that he shall fail or refuse to pay and being in addition to said imprisonment of Nine (9) Months.

Further, I have adjudged that said Clinton Maelhorn be imprisoned in the Federal Jail at Anchorage, Alaska, for a period of Nine (9) months, and that he pay a fine of Nine Hundred Dollars (\$900.00), and further that

said defendant Clinton Maelhorn be imprisoned in the Federal Jail at Anchorage, Alaska, until such fine be satisfied, said imprisonment not to exceed One (1) day for every two Dollars (\$2.00) of such fine, and that said Clinton Maelhorn serve One Day for every two dollars that he shall fail or refuse to pay, and being in addition to said imprisonment of Nine (9) Months.

Done in open court this 11th day of August, 1922.

W. H. RAGER,

Commissioner and *Ex-Officio*
Justice of the Peace.

Aug. 15, 1922. Notice and undertaking on appeal sum of \$2000, sureties P. O. Sundberg, Z. J. Loussac as to C. F. Peterson, approved and filed.

Notice and undertaking on appeal sum of \$2000.00, sureties P. O. Sundberg and Z. J. Loussac as to defendant Clinton Maelhorn, approved and filed. [8]

In the Justice's Court for the Territory of Alaska,
Third Division, Knik Precinct, at Anchorage.

No. —.

UNITED STATES OF AMERICA, TERRI-
TORY OF ALASKA,

Plaintiff,

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Notice of Appeal.

To the UNITED STATES OF AMERICA, the
Plaintiff in the Above-entitled Action, and to
the United States District Attorney for Third
Judicial Division, Territory of Alaska, or Any
of His Assistants, and to J. A. HURLEY, As-
sistant United States District Attorney at An-
chorage, Alaska, and to the Hon. WILLIAM
H. RAGER, Justice of the Above-styled Court:

You and each of you will please take notice, that
C. F. Peterson, the defendant in the above-entitled
action, hereby appeals to the District Court for the
Territory of Alaska, Third Division, from the judg-
ment of conviction therein made and entered in
the Justice's Court for the Territory of Alaska,
Third Division, Knik Precinct, at Anchorage, be-
fore the Hon. William H. Rager, United States
Commissioner and *Ex-Officio* Justice of the Peace, on
Friday the 11th day of August, A. D. 1922, in favor
of the above-named plaintiff, United States of

America, and against the above-named defendant, C. F. Peterson, and from the whole thereof.

Said judgment of conviction by the Hon. William H. Rager being that the said defendant, C. F. Peterson, be confined and serve nine (9) months in the federal jail at Anchorage, Alaska, and also to pay a fine of Nine Hundred Dollars (\$900.00) and in lieu of and failure to pay such fine to serve one day for every Two Dollars of each fine until the same is satisfied for the crime of having intoxicating liquor in his possession at Anchorage, Alaska, on the 24th day of July, A. D. 1922, and being in violation of the Act known as "An Act to prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska and for other purposes" and approved February 14, 1917, said Act being commonly known as the Alaska Bone Dry Law; said defendant having been tried by the Court on the 11th day of August, 1922, and found defendant guilty as [9] charged. Said judgment hereby appealed from being in words and figures, to wit:

The above-named defendants C. F. Peterson and Clinton Maelhorn being brought before me, William H. Rager, a commissioner and *Ex-Officio* Justice of the Peace in a criminal action for the crime of having intoxicating liquor in his possession in violation of Act of Congress approved Feb. 14, 1917, and the said C. F. Peterson and Clinton Maelhorn having thereupon pleaded not guilty and been duly tried by me and upon such trial duly convicted I have adjudged that said defendant C. F. Peterson be imprisoned in the federal jail at Anchorage, Alaska,

for a period of nine (9) months and that he pay a fine of Nine Hundred Dollars (\$900.00) and further that the said defendant C. F. Peterson be imprisoned in the federal jail at Anchorage, Alaska, until such fine be satisfied said imprisonment not to exceed one (1) day for every Two (2) Dollars of such fine and that said C. F. Peterson serve one day for every Two Dollars of such fine of Nine Hundred Dollars (\$900.00) that he shall fail or refuse to pay and being in addition of said imprisonment of nine (9) months.

Further I have adjudged that said Clinton Maelhorn be imprisoned in the federal jail at Anchorage, Alaska, for a period of nine (9) months and that he pay a fine of Nine Hundred Dollars (\$900.00) and further that said defendant Clinton Maelhorn be imprisoned in the federal jail at Anchorage, Alaska, until such fine be satisfied, said imprisonment not to exceed one day for every Two Dollars (\$2.00) of such fine and that said Clinton Maelhorn serve one day for every two dollars of such fine of \$900.00 that he shall fail or refuse to pay and being in addition to said imprisonment of nine (9) months.

Done in open court this 11th day of August, 1922.

[Seal]

W. H. RAGER,

Commissioner and *Ex-Officio* Justice of the Peace.

[10]

Said judgment being entered in Criminal Docket No. 4 at page 170 in the above-styled court, and being Cause No. 973.

Said defendant C. F. Peterson, by order of the Court, having appeared for sentence on the 11th

day of August, 1922, was sentenced as above set out by the Hon. William H. Rager, the Justice above named and before whom the trial of the case was had.

This appeal is taken on questions of both law and fact.

Dated at Anchorage, Alaska, this 14th day of August, 1922.

(Signed) RAY and DAVID,
Attorneys for Defendant,
Anchorage, Alaska.

Service of the above and foregoing notice of appeal admitted and accepted, by true copy, this 14th day of August, 1922.

(Signed) SHERMAN DUGGAN.
U. S. District Attorney, Third Division, Territory
of Alaska.

By JULIEN A. HURLEY,
Assistant U. S. District Attorney, Third Division,
Territory of Alaska. [11]

In the Justice's Court for the Territory of Alaska,
Third Division, Knik Precinct, at Anchorage.

No. 973.

UNITED STATES OF AMERICA, TERRITORY
OF ALASKA,

Plaintiff,

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Undertaking on Appeal.

Filed August 15, 1922.

The above-entitled cause having been tried on the 11th day of August 1922, and the above-named defendant C. F. Peterson, having been found guilty as charged in the Justice's Court, Knik Precinct, Third Division, Territory of Alaska, at Anchorage, before Hon. Wm. H. Rager, Commissioner and *Ex-Officio* Justice of the Peace, and a judgment of conviction having been given on the 11th day of August 1922, by the Hon. Wm. Rager, the Justice of the above styled Court, whereby the above-named defendant, C. F. Peterson, was condemned to serve nine (9) months in the federal Jail at Anchorage, Alaska, and also to pay a fine of Nine Hundred Dollars (\$900.00) and in lieu of and failure to pay such fine to serve one day for every Two Dollars of such fine until the same is satisfied for the crime of having intoxicating liquor in his possession on the 24th day of July, 1922, and being in violation of the Act known as "An Act to prohibit the manufacture or sale of alcoholic liquors in the Territory of Alaska, and for other purposes" and approved February 14, 1917, said Act being commonly known as the Alaska Bone Dry Law, said judgment hereby appealed from being in words and figures to wit:

The above-named defendants C. F. Peterson and Clinton Maelhorn being brought before me, Wm. H. Rager, a Commissioner and *Ex-Officio* Justice of the Peace, in a criminal action for the crime of having intoxicating liquor in his possession in violation

of Act of Congress approved Feb. 14, 1917 and the said C. F. Peterson [12] and Clinton Maelhorn having thereupon pleaded not guilty and been duly tried by me and upon such trial duly convicted, I have ordered and adjudged that said defendant C. F. Peterson be imprisoned in a federal jail at Anchorage, Alaska, for a period of nine (9) months and that he pay a fine of Nine Hundred Dollars (\$900.00) and further that the said defendant C. F. Peterson be imprisoned in the federal jail at Anchorage, Alaska, until such fine be satisfied, said imprisonment not to exceed one day for every Two Dollars of such fine and that said C. F. Peterson serve one day for every Two Dollars of such fine of Nine Hundred Dollars (\$900.00) that he shall fail or refuse to pay and being in addition of said imprisonment of nine months.

Further, I have adjudged that said Clinton Maelhorn be imprisoned in the federal jail at Anchorage, Alaska, for a period of nine months and that he pay a fine of Nine Hundred Dollars (\$900.00) and further that said defendant Clinton Maelhorn be imprisoned in the federal jail at Anchorage, Alaska, until such fine be satisfied, said imprisonment not to exceed one day for every Two Dollars (\$2.00) of said fine and that said Clinton Maelhorn serve one day for every two dollars of such fine of \$900.00 that he shall fail or refuse to pay and being in addition to said imprisonment of nine (9) months.

Done in open court this 11th day of August, 1922.

W. H. RAGER,

Commissioner and *Ex-Officio* Justice of the Peace.

Said judgment being entered in Criminal Docket No. 4 at page 170 in the above-styled court, and being Cause No. 973.

Said defendant having appealed from said judgment rendered in the Justice's Court, Knik Precinct, Third Division, Territory of Alaska, before Hon. Wm. H. Rager, Commissioner and *Ex-Officio* Justice of the Peace, to the District Court for the Territory of Alaska, Third Division; and said C. F. Peterson, the above-named defendant having been admitted to bail in the sum of Two Thousand Dollars (\$2000.00). [13]

NOW, THEREFORE, I, C. F. Peterson, as principal, and Z. J. Loussac, a resident of Anchorage, Alaska, by occupation a druggist, and P. O. Sundberg, a resident of Anchorage, Alaska, by occupation a merchant, as sureties, do hereby undertake that the above-named defendant C. F. Peterson, shall in all respects abide and perform the orders and judgments of the Appellate Court upon appeal, or if he fails so to do in any particular, that we will pay to the United States the sum of Two Thousand Dollars (\$2000.00).

We further undertake that the appellant will also pay to the United States all costs and disbursements that may be awarded against him on appeal.

Dated and sealed at Anchorage, Alaska, this 15th day of August, 1922.

C. F. PETERSON, (Seal)
Principal.

P. O. SUNDBERG, (Seal)
Surety.

Z. J. LOUSSAC, (Seal)
Surety.

United States of America,
Territory of Alaska,—ss.

Z. J. Loussac and P. O. Sundberg, as sureties named in the foregoing undertaking, being first duly sworn, each for himself and not one for the other deposes and says that he signed the foregoing instrument and undertaking; that he is a resident of the Territory of Alaska, that he is not a counselor or attorney at law, marshal, clerk of the Court or other official of any Court; that he is worth the sum specified in the undertaking exclusive of property exempt from execution, over and above all his just debts and liabilities.

P. O. SUNDBERG.

Z. J. LOUSSAC. [14]

Subscribed and sworn to before me this 15th day of August, 1922.

W. H. RAGER,
Commissioner and *Ex-Officio* Justice of the Peace,
Knik Precinct, at Anchorage.

Taken and acknowledged before me and approved this 15th day of August, 1922.

[Seal]

W. H. RAGER,
Commissioner and *Ex-Officio* Justice of the Peace,
Knik Precinct, at Anchorage. [15]

In Commissioner's Court, Third Division, Territory of Alaska at Anchorage.

Before W. H. RAGER, Commissioner and *Ex-Officio* Justice of the Peace.

No. 973.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Certificate of Justice.

I HEREBY CERTIFY that the attached consisting of two (2) pages is a true and correct transcript of my docket, and contains a copy of all the material entries *my* my docket relating to said cause and appeal, and is a copy of my docket in the above-entitled action.

I also certify that the annexed and accompanying papers are all the original papers relating to said cause and appeal and filed with me and being all the papers and pleadings filed in said cause as well as the notice of appeal and undertaking on appeal filed herein:

And for the purpose of identification I FURTHER CERTIFY that said attached papers in said cause and appeal are numbered (in ink) from 1 to 8, both inclusive.

Dated and signed at Anchorage, Alaska, this 16th day of August, A. D., 1922.

[Seal]

W. H. RAGER,
Commissioner and *Ex-Officio* Justice of the Peace,
Knik Precinct, at Anchorage.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Aug. 22, 1922. W. N. Cuddy, Clerk. By Robt. S. Brograw, Deputy.
[16]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Transcript of Evidence.

BE IT REMEMBERED, That the above-entitled cause came on duly and regularly to be heard on Tuesday, the fifth day of December, 1922, at Anchorage, in said Territory and Division, before the Honorable E. E. RITCHIE, Judge of said Court, and a jury:

The Government was represented by Julien Hurley and Harry G. McCain, Assistant United States Attorneys:

The defendants were represented by their attorneys and counsel, L. V. Ray, Esq., and Leopold David, Esq.

A jury having been empanelled, opening statements were made by Mr. Hurley on behalf of the Government, and by Mr. Ray on behalf of the defendants.

WHEREUPON the following proceedings were had and done, to wit: [17]

Mr. RAY.—There has also been filed in this case a motion for continuance and change of venue with which by reference the affidavits in the other Peterson case, #881 criminal, are made a part.

The COURT.—The motion is denied. Defendants allowed an exception.

In the course of the examination of the jury, counsel for defendants made the following statement:

Mr. RAY.—The defendants at this time renew the motion heretofore made for a change of venue and continuance of this case on the ground of inability to secure jurors who are without opinion or prejudice; further, that a general opinion or prejudice existing in the community is shown by the examination of some forty-five jurors which fact would tend to reflect itself in the jury room and in any verdict returned into court at this term of court.

The COURT.—Motion denied. Exception allowed.

Mr. RAY.—The defendants call the attention of the Court to the fact that this is an appeal case in which bonds covering cost of appeal have been required of defendants; and that the excessive cost of further action in this case in the event he is here found guilty is such as to deny to the defend-

ants their constitutional rights with reference to a fair and impartial trial, and penalizes him in the prosecution of his appeal. I would further call the Court's attention to the absolute inequality of the defendants upon appeal as against the government.

The COURT.—Why, Mr. Ray, as I understand the law governing the request of the defendants for a change of venue, it is not enough for them to show that there is a good deal of hostility to them in the community, but there must be a showing that the general hostility of the community to them is such as might influence a jury against them after being empanelled, as in the [18] Frank case in Georgia where the defendant was, without a doubt, convicted by the crowd inside and outside the courtroom; or the sentiment must be so strong that it would be almost impossible to get a fair jury from the body of the community. I was not satisfied when I denied the motion before that this is true in this case and I am no more satisfied now, because the jurors who have been called here and disqualified so numerous has satisfied me that my judgment at that time was correct. The jurors are generally honest in their statements and do not hesitate to say so and disqualify when they have a prejudice or opinion. A great many jurors here who didn't feel sure they could be impartial have said so and disqualified. This is a large community and while I am disappointed that a jury has not been secured from the number of jurors drawn, I am still satisfied that a jury can be obtained. I do not believe now that it would be well to adjourn this case.

Under certain circumstances a court is justified in adjourning a case but I am not sure if to adjourn this case now wouldn't amount to a mistrial and probably raise the question of jeopardy. Jeopardy, by the great weight of authority, commences when the jury is sworn, but a Court should not discharge a jury without some substantial reason.

I am mindful of the fact that there has been a very considerable showing made that there is hostility to the defendant in this community. Because of that fact I have required the names of the special venire to be drawn from the box, and, without any reflection on the marshal's office, I do not care to have any jurors summoned by the marshal or his deputies to sit in this case. In order to avoid any possibility that it might appear advantage is being taken by the Government in empanelling this jury I have required against, for the second time, that the names be drawn from the box. Your motion for a change of venue is denied. Defendants allowed an exception. [19]

Testimony of C. W. Mossman, for the Government.

C. W. MOSSMAN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination:

(By Mr. HURLEY.)

Q. What is your name? A. C. W. Mossman.

Q. What official position, if any, do you hold in Anchorage? A. Deputy U. S. Marshal.

Q. For what division? A. The third.

(Testimony of C. W. Mossman.)

Q. Were you acting as deputy United States marshal on the 20th day of July, 1922.

A. I was.

Mr. RAY.—The defendants object to the introduction of the testimony of the witness for the following reasons:

1. The complaint on which the defendants are sought to be placed on trial is signed "C. W. Mossman" not in any official capacity. An indictment to be good would have to be signed "Sherman Duggan, United States Attorney."

2. The Court is without jurisdiction to try these defendants in that it is in violation of the rights of the defendants as given by the fifth amendment of the Constitution of the United States providing that no person shall be held to answer for a capital or otherwise infamous crime unless by indictment of a grand jury.

3. That the Congress of the United States is without authority to pass legislation making the possession of intoxicating liquor an offense.

4. That the offense sought to be charged in this complaint is not set forth with sufficient certainty to apprise these defendants to which charge they must answer, and the complaint [20] does not state sufficient facts in law to constitute a valid complaint.

The COURT.—The objection is overruled. Defendants allowed an exception.

Mr. HURLEY.—Now, Mr. Mossman, will you go ahead and state what time of the day it was, on the

(Testimony of C. W. Mossman.)

20th day of July this year, that you saw the defendants Chauncey Peterson and Mr. Maelhorn, if you did see them?

A. Between two and three o'clock in the afternoon of July 20th.

Q. Who was with you?

A. Mr. Watson, Mr. Green and Cadawallader, the driver of the car which we hired.

Q. Under what circumstances did you meet the defendants?

A. Proceeding to the southern limits of the town at Ninth Street and "N" we left the town and went across an uncultivated portion of the country out there—it is clear as to trees but not stumps—in the direction of Chester Creek in Knik Arm outside the town about a mile, and proceeding out that road we got to a point about a hundred yards from where the railroad track crosses the road and intercepted the defendants in a car coming toward town, and we were going from town.

Q. That was in Knik precinct, in Alaska?

A. Yes, sir.

Q. Just go ahead and state what was done there when you met the defendants at that time?

Mr. RAY.—At the time you intercepted the defendants as you stated in the car had you a search-warrant?

Mr. HURLEY.—We object to the question, if the Court please, as incompetent.

The COURT.—Objection overruled.

(Testimony of C. W. Mossman.)

The WITNESS.—I had no search-warrant, no, sir. [21]

Mr. RAY.—Have any other process of any kind?

The WITNESS.—No, sir.

Mr. RAY.—The defendants object to the further introduction of the testimony of this witness and any evidence obtained by him as the same was procured in violation of the fourth and fifth amendments to the Constitution of the United States providing that there shall be no illegal and unreasonable searches and seizures, and that a defendant shall not be compelled to give incriminating testimony or further incriminating testimony against himself.

The COURT.—The objection is overruled. Exception allowed.

Mr. HURLEY.—Now, go ahead Mr. Mossman and state what transpired out there at the point where you and Judge Green and Mr. Watson met the defendants.

A. Well, we were proceeding in our car in the direction I have indicated on this road which is nothing but a trail so far as any work has been done on it. It is impossible to pass at any place and we ran up into the car; up immediately in front of the car occupied by these two defendants. They had just come over the hill and they were out of our sight a moment before we met them. We were coming down on this side of the little hill when we got to them. I got out of our car and went to the car occupied by the defendants and recognized

(Testimony of C. W. Mossman.)

both defendants. I said to the defendant Peterson, "What have you got, Chauncey?" and he said, "I have a load." His car had the storm curtains on the sides but I could see it was filled with some product behind, that is the whole space between the front and rear seat, with what I soon discovered to be barrels. [22]

Q. Who was driving the car?

A. The defendant Peterson.

Q. And whose car was it?

Mr. RAY.—We object to the question as calling for a conclusion of the witness.

The COURT.—He may answer if he knows. The objection is overruled. Exception allowed.

A. It is the defendant Peterson's car.

Q. Do you know what kind of a car it is?

A. A Buick seven-passenger touring car.

Q. When you saw the barrels or kegs in the car what did you do?

Mr. RAY.—We object to the question as something not yet in evidence.

The COURT.—The objection is overruled. Exception allowed.

A. I moved our car to one side and climbed into their car on top of these kegs or barrels and drove into town with the two defendants.

Q. And were the other officers there at the time?

A. They were there at the time myself and the two defendants came into town; they didn't ride into town.

Q. How did they come into town?

(Testimony of C. W. Mossman.)

Mr. RAY.—Object to the question.

The COURT.—Objection overruled. Exception allowed.

A. I directed them to continue down to the creek.

Mr. RAY.—We object to the answer as not responsive and ask that it be stricken.

The COURT.—The answer will be stricken.

Q. How did they get back to town.

A. They were walking when I left them.

Q. In what direction? [23]

Mr. RAY.—We object to that.

The COURT.—The objection is overruled. Exception allowed.

A. They continued on down this road around which the defendants had come and proceeded in the direction of Chester Creek.

Q. And you and the two defendants did what then? A. We came into town.

Q. What did you do with the car and the barrels that you found in the car, if anything?

A. We put the car in a shed in the rear of the office and put the barrels in a room next to my office.

Q. Did you examine the contents of the barrels that you found there in the defendant's car that day? A. I did.

Q. What did they contain?

A. A locally manufactured whisky called white mule.

Q. Is that an intoxicating liquor? A. Yes, sir.

(Testimony of C. W. Mossman.)

Q. Did you take possession of the barrels and contents? A. Yes, sir.

Q. Can you produce them? A. Yes, sir.

Q. How much liquor did the defendants have in the car at the time?

A. Ninety-five gallons contained in eight ten-gallon kegs and three five-gallon kegs.

Q. And are these the kegs that you have just brought into the courtroom the contents that you took from the car of the defendants?

A. Yes, sir.

Q. I believe you stated that you examined the contents of some of these barrels?

A. Yes, sir. [24]

Q. Is there any of them that can be opened at the present time? A. I think so.

Q. And is the contents of this bowl that you have poured from this keg part of the liquor that you found in the car on that day?

Mr. RAY.—We object to the question. The liquor is not yet in evidence; and we object to the conduct of the prosecuting officer in thus making an attempt to introduce certain testimony before the Court has formally passed upon and admitted such testimony.

Mr. HURLEY.—We will withdraw the question.

The COURT.—I think it was an oversight.

Q. I wish at this time to offer the—

Mr. RAY.—We except to the statement of the Court as not being sufficient under the circum-

(Testimony of C. W. Mossman.)

stances which have arisen to correct the error; and we object to the introduction of the kegs and contents for the reason that it is apparent on the testimony of the officer that he acted without process of any kind.

The COURT.—The objection is overruled. Exception allowed.

Mr. HURLEY.—We now offer in evidence the barrels and contents.

The COURT.—They will be admitted.

The barrels and contents admitted in evidence and marked Plaintiff's Exhibits "A" to "K" inclusive.

Q. I will hand you this bowl and its contents and ask you to state what it is and where you got it?

A. It is whisky, commonly called white mule, and I took it from one of the kegs taken from the defendants Peterson and Maelhorn.

Q. Is that one of the kegs we marked as an exhibit? A. Yes, that is Exhibit "A."

Q. That keg that you took the liquor from, that is in the bowl is marked Exhibit "A."

A. Yes, sir. [25]

Q. Where have these kegs and the contents of these barrels that have been introduced in evidence been since you took them from the defendants?

A. They have been in my possession.

Q. Have the contents of these barrels been changed or tampered with?

(Testimony of C. W. Mossman.)

A. No, except that one of the ten-gallon kegs has been leaking and is not now full.

Q. Has there been any other change except as you have stated in regard to one barrel?

A. No, sir.

Q. Did you state on what day this was?

A. July 20, 1922.

Mr. HURLEY.—I want to offer this bowl and its contents in evidence, taken from Exhibit “A.”

Mr. RAY.—Objection on the same grounds. It was an unlawful seizure. Defendant also objects to the jurors acting as witnesses in that certain liquid has been circulated among them by the assistant United States attorney.

The COURT.—The objection will be overruled. The bowl will be admitted in evidence and marked. Exception allowed.

The bowl admitted in evidence as Plaintiff’s Exhibit “L.”

Mr. HURLEY.—That is all.

Mr. RAY.—The defendants move to strike the testimony of the witness Mossman as to any fact testified by him on the ground that the said officer acted without process of law, either a search-warrant or warrant of arrest for these defendants, in violation of the constitutional rights provided in the fourth and fifth amendments to the Constitution of the United States, and was in effect an illegal search and illegal seizure.

The COURT.—The motion is denied. Exception allowed.

Mr. RAY.—We have no cross-examination. [26]

Testimony of Charles A. Watson, for the Government.

CHARLES A. WATSON, a witness called and sworn in behalf of the Government, testified as follows:

Direct Examination.

(By Mr. HURLEY.)

Q. What official position do you hold in the territory of Alaska?

A. Deputy United States Marshal, third division.

Q. Were you a deputy United States Marshal on the 20th day of July, 1922? A. Yes, sir.

Q. Where were you on the afternoon of the 20th day of July, 1922, between the hours of two and three o'clock in the afternoon?

A. I was out on the brick-yard road.

Q. Who were you with at that time?

A. Cadwalladar was driving the car I was in with Mr. Mossman and Judge Green.

Q. Did you see the defendants, or either of them on that afternoon? A. Yes, sir.

Q. Whereabouts?

A. On the brick-yard road about 100 yards from the track.

Q. What were they doing?

A. They were in the car, driving it.

Q. Anybody else in the car with them?

A. No, sir.

Q. Who was driving the car?

A. The defendant Peterson.

(Testimony of Charles A. Watson.)

Q. And what did you do when you saw the defendants out there?

A. Well, the cars came facing one another and pretty close. We were just over a little knoll or bend and Mr. Mossman and Judge Green and I got out and went to their car. [27]

Mr. RAY.—Did you have a search-warrant?

A. No, sir.

Mr. RAY.—Any other warrant? A. No, sir.

Mr. RAY.—We object to the introduction of testimony of this witness now sought to be elicited on the ground that the same is in violation of the rights of the defendant as prescribed in the fourth and fifth amendments to the Constitution of the United States.

The COURT.—The objection is overruled. Exception allowed.

Q. Go ahead and just state what you did there.

A. We went over to his car and saw the barrels and booze in there. Mossman went in the car and Green and I went down to the beach.

Q. Did you see what was in the car at that time?

A. Yes, sir.

Q. I call your attention to Exhibits "A" to "K" that have been introduced—the barrels here—and ask you to state what they are, if you know?

A. Yes, they are eight ten-gallon and three five-gallon barrels of white mule.

Q. And you have examined the contents of these barrels? A. Yes, sir.

Q. Where did you first see them?

(Testimony of Charles A. Watson.)

A. In Chauncey Peterson's car.

Q. On the afternoon of the 20th day of July, 1922? A. Yes, sir.

Q. Do you know in what precinct you saw the liquor first?

A. The south side of the city limits in Knik precinct. [28]

Q. In Knik precinct?

A. Yes, sir, in Knik precinct.

Q. Do you know whether or not the contents of these barrels that have been introduced in evidence is intoxicating liquor? A. Yes, sir.

Q. Is it? A. Yes, sir.

Q. What is it commonly called?

A. White mule.

Q. Did you hear any conversation of the defendants at that time?

A. Mossman said something: I couldn't tell what it was and I didn't hear the answer.

Q. Did you notice the defendant Maelhorn—where he was in the car?

A. He was sitting aside Peterson in the front seat.

Q. What time of the day was this?

A. I think it was about half past two or three o'clock.

Q. Who was driving the defendant's car?

A. Mr. Peterson.

Q. You know that, do you—how do you know?

A. He was at the front seat at the wheel?

Q. Did you recognize the car? A. Yes, sir.

(Testimony of Charles A. Watson.)

Q. Do you know whose car it was? A. Yes, sir.

Q. Whose? A. Mr. Peterson's.

Mr. HURLEY.—That is all.

Mr. RAY.—Defendants move to strike the testimony of the witness Watson on the ground that the testimony thus given is based upon a search without warrant of arrest or search-warrant in contravention of the rights of the defendant established by the fourth and fifth amendments to the Constitution of the United States. [29]

The COURT.—The motion is denied. Exception allowed.

Cross-examination.

(By Mr. RAY.)

Q. Is this car a left-hand or right-hand drive.

A. Left hand.

Q. Was Chauncey on the left-hand side from you?

A. Left hand.

Q. Sure about it?

A. Yes, he was on the left-hand side of the car.

Mr. RAY.—That is all.

Witness excused.

**Testimony of C. W. Mossman, for the Government
(Recalled).**

C. W. MOSSMAN, recalled for further examination, testified as follows:

(By Mr. HURLEY.)

Q. I believe you stated in your testimony that you came in with the defendants after you met

(Testimony of C. W. Mossman.)

them there on this road on the afternoon of the 20th day of July, this year; is that correct?

A. Yes, sir.

Q. Did either of the defendants have any conversation with you while you were coming in?

A. Yes, sir.

Q. Did the defendants, or either of them, make any voluntary statements to you? A. Yes, sir.

Q. Who? A. Mr. Maelhorn. [30]

Q. What did he say?

Mr. RAY.—Were these men under arrest at the time they talked?

A. Yes, I would say so; I would say that they and myself understood what the situation was.

Q. Well, were these men under arrest at that time? A. Yes.

Q. And you say you had a conversation with Maelhorn, or he made some statement?

A. Yes, sir.

Q. Did you caution him as to his rights in any way? A. No, sir.

Q. Did you say to him that what he might state to you you would have to use as an officer against him? A. No, sir.

Q. Did you have him handcuffed? A. No, sir.

Mr. HURLEY.—Did you seek to elicit any information from either of the defendants by questioning them or anything?

The WITNESS.—No, sir.

Mr. HURLEY.—Were these statements made voluntarily without anything on your part?

(Testimony of C. W. Mossman.)

The WITNESS.—Yes, sir.

Mr. RAY.—Did you ask these men any questions?

A. I don't recall asking any questions.

Q. You are quite sure that you didn't first ask some questions about what they were doing?

A. The only question I asked was when we first approached the car: I said, "What have you got there?" and he said, "I have a load."

Q. How long a drive is it from there to the federal jail?

A. Ten minutes at the most, depending on the speed used. [31]

Q. They were under arrest during this ten minute interval; during the time it took to come from the place you intercepted them? A. Yes, sir.

Q. During that time you asked no questions?

A. No, sir.

Mr. RAY.—Well, we object to the introduction of any statements made by the defendants while under arrest.

The COURT.—The objection is overruled. Exception allowed.

Mr. HURLEY.—What statement did Mr. Maelhorn make to you?

A. He rather jocularly remarked that people who played with fire got burnt.

Q. Any other statement? A. No, sir.

Mr. HURLEY.—That is all.

Cross-examination.

(By Mr. RAY.)

Q. You don't know where that quotation comes from, do you?

(Testimony of C. W. Mossman.)

Mr. DUGGAN.—Object to the question; that's nonsense.

The COURT.—The objection is sustained.

Q. Have you ever heard that quotation before?

A. Many times.

Q. Do you frequently use it?

A. It is in my vocabulary; it is a common quotation.

Q. Are you sure you didn't ask him any questions? A. I am not sure.

Q. You didn't even talk about the weather?

A. We're well acquainted. There was no reason why we shouldn't talk then as well as any other time.

Q. And he made the remark stated?

A. Yes, sir.

Mr. RAY.—That is all.

Witness excused. [32]

Testimony of J. L. Green, for the Government.

J. L. GREEN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HURLEY.)

Q. Were you a special deputy United States marshal on the 20th day of July, this year?

A. I am not sure whether I received my appointment just before that or just after, but I was a special agent for the suppression of the liquor

(Testimony of J. L. Green.)

traffic among the Indians and among my duties I had to look after—

Mr. RAY.—We object to the answer as not responsive.

The COURT.—The objection is sustained; that is the objection to the last part of the answer.

Q. Did you see the defendants on the 20th day of July, 1922? A. Yes, sir, I did.

Q. About what time did you first see them?

A. I should judge between two and three o'clock.

Q. Who was with you?

A. Mr. Mossman, Mr. Watson and Mr. Cadwallader.

Q. Where did you see the defendant?

A. When we first saw the car we were just going down the first hill—we saw the top of the car. I first saw the defendants when we came up the hill near the railroad track. We were going up on one side and Chauncey's car was on the other and when we came to the top we met, and we saw Chauncey then.

Q. Did both cars stop? A. Yes, sir.

Q. Did you recognize the car you met?

A. Yes, sir.

Q. Do you know whose car it was?

A. Mr. Peterson's. [33]

Q. Was there anybody in the car?

A. Yes, Peterson and I think it was a man looked like this other gentleman. He was dressed differently and it was the first time I ever saw him.

Q. You are not acquainted with Mr. Maelhorn?

(Testimony of J. L. Green.)

A. No, sir.

Q. Who was driving the car?

A. Mr. Peterson.

Q. After the car stopped what did you do?

A. I looked into this car and saw there were some kegs.

Mr. RAY.—Had you a warrant?

The WITNESS.—No, sir.

Mr. RAY.—Are you sure you were a deputy United States marshal on this day?

The WITNESS.—I am not sure that I was a deputy United States marshal, but I filled the other position.

Mr. RAY.—Had you a search-warrant to search an automobile?

The WITNESS.—No, sir.

Mr. RAY.—Defendants object to the introduction of the testimony sought to be elicited from this witness on the ground that it was obtained without authority in law and in violation of the rights of these defendants as established by the fourth and fifth amendments to the Constitution of the United States.

The COURT.—The objection is overruled. Exception allowed.

Q. Go ahead and state just what you did there?

A. I looked in the car and saw the kegs; however, I didn't count them at that time. And then Mr. Mossman got in the car and told Mr. Peterson to drive on up to the jail and they went on; and then Mr. Watson and I sent back the car we were in;

(Testimony of J. L. Green.)

then I didn't see any more of the defendants till we got back up to the jail. [34]

Q. Did you examine these barrels which have been introduced here in evidence?

A. I examined and counted them after they got up to the marshal's office but I have never tasted the contents of any of these barrels.

Q. I will hand you this bowl and its contents which have been introduced in evidence as Plaintiff's Exhibit "L," and ask you to examine the contents of this bowl. Do you know what that bowl contains? A. Yes, sir.

Q. State what it contains? A. White mule.

Q. Is that an intoxicating liquor?

A. Yes, a crude form of whiskey or alcohol.

Mr. HURLEY.—That is all.

Mr. RAY.—I ask that the witness Green's testimony be stricken on the ground that the same is based on a seizure without search-warrant in contravention to the rights guaranteed to these defendants by the fourth and fifth amendments to the Constitution of the United States.

The COURT.—The motion is denied. Exception allowed.

Cross-examination.

(By Mr. RAY.)

Q. When you saw these kegs was there anything over them in the automobile?

A. I didn't notice anything over them at that time. Mossman went first and opened up the side curtains; it was a closed car, it had curtains. Then

(Testimony of J. L. Green.)

I got out and Watson got out and I went around and looked and saw the kegs in the condition they are in now. [35]

Q. There was nothing over them?

A. I don't remember seeing anything over them. There may have been and thrown back, I don't know.

Q. You say it was a closed car? A. Yes, sir.

Q. You mean it had side curtains? A. Yes.

Q. Not wooden side curtains? A. No, sir.

Q. And what day was this?

A. My recollection is that it was on the 20th day of July.

Q. Do you know what day of the week it was?

A. No, sir; I don't.

Q. What is this title you might have held on this day: what kind of an officer?

A. Special officer for the suppression of liquor among the Indians.

Q. Employed by the Department of Interior?

A. Yes, sir.

Q. Not employed by the Department of Justice?

A. No, only as I had received my employment as a special deputy marshal.

Q. You say you have not examined the contents of these barrels? A. No, sir.

Q. Were there gunny-sacks on these barrels when you first saw them? A. Yes, sir.

Mr. RAY.—That is all.

Witness excused. [36]

Testimony of C. L. Cadwallader, for the Government.

C. L. CADWALLADER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HURLEY.)

Q. Where do you reside? A. In Anchorage.

Q. Were you residing here on the 20 day of July, this year? A. I was.

Q. What business were you engaged in at that time? A. In the taxi business, car business.

Q. Did you see Mr. Mossman, Judge Green and Mr. Watson that afternoon of the 20th?

A. I don't recall the date but it was around that time when I was called by Mr. Mossman.

Q. And what did he call you for?

A. I don't know; he said to come down and I went to his office.

Q. Did you see either of the defendants that afternoon that the officers had you come to the office? A. I did.

Q. And what were you doing at the time you first saw them? A. I was driving.

Q. What car? A. My own.

Q. Who was with you?

A. Charley Watson, Judge Green and Mr. Mossman.

Q. How did they happen to be with you at that time?

(Testimony of C. L. Cadwallader.)

Mr. RAY.—Object to the question.

The COURT.—Objection overruled. Exception allowed.

A. They called me for service and I rendered it.

Q. They employed you at that time?

A. They did. [37]

Q. Whose car was this you were driving?

A. My own car.

Q. And as I understand it you were driving your car on that afternoon—

Mr. RAY.—We object to the question.

The COURT.—The objection is overruled. Exception allowed.

Q. Where were you when you first saw the defendants that afternoon?

A. You mean what road?

Q. Yes.

A. We were out on this road that runs to the mouth of Chester Creek known as the old brick-yard road.

Q. And what were the defendants doing when you first saw them?

A. They were in the seats of their car.

Q. Did you recognize the car they were in?

A. Yes, sir; I recognized the car.

Q. Did you know whose car it was?

A. Well, it was supposed to be Chauncey's, that's all I know.

Q. Who was driving the car?

A. Chauncey was at the wheel.

Q. And did you stop your car? A. I did.

(Testimony of C. L. Cadwallader.)

Q. What did the officers who were with you do then? A. They got out from the car.

Q. And what did Mr. Mossman do?

A. He went to Chauncey's car and got in.

Q. And then what?

A. They passed me and I didn't come up; I came up afterwards.

Q. Who came up?

A. Nobody; I came back alone.

Q. Did you examine anything in Mr. Peterson's car at that time? A. I did not. [38]

Q. You were just driving where the officers told you to go? A. Yes, sir.

Mr. HURLEY.—That is all.

Cross-examination.

(By Mr. RAY.)

Q. You have been down to Chester Creek before?

A. Yes, sir.

Q. Is there room for two cars to pass there?

A. Two cars can pass along most of the road; some of it they can't pass.

Q. Well, this particular place where you intercepted the car where Mr. Peterson was: was there room to pass?

A. When I stopped the car there was.

Q. Well, did you stop in front of him to impede his progress? A. No, sir; not intentionally.

Q. Under the direction of the officers?

A. No, sir.

Q. Well, could he have gone out around you?

A. Not at this particular place I don't think he

(Testimony of C. L. Cadwallader.)

could have gone around without running into the stumps.

Q. It's just an ordinary trail that can be used by automobiles? A. Just a single track wood road.

Mr. RAY.—That is all.

Witness excused.

The Government rests. [39]

DEFENSE.

Testimony of Clinton Maelhorn, for Defendants.

CLINTON MAELHORN, one of the defendants, sworn as a witness in his own behalf, and in behalf of his codefendant C. F. Peterson, testified as follows:

Direct Examination.

(By Mr. RAY.)

Q. What is your name? A. Clinton Maelhorn.

Q. You are one of the defendants?

A. Yes, sir.

Q. How long have you been in Alaska?

A. I have been in Alaska on and off for seven or eight years.

Q. What is your occupation?

A. Now I am driving a car for Peterson.

Q. Working for wages? A. Yes, sir.

Q. On the 20th day of July, this year, what occupation had you?

A. I was working for him at that time.

Q. Before coming to Alaska had you been engaged in any business other than the automobile business?

(Testimony of Clinton Maelhorn.)

A. This is the first time I have ever been in Alaska.

Q. Have you been in any other part of the north?

A. Been inside.

Q. What business were you in there?

A. Gasboating on the lower Yukon.

Q. Ever engaged in mining?

A. I was prospecting three winters.

Q. What is your native state?

A. Illinois. [40]

Q. You had an automobile stage line in Oregon?

A. In Salem, Oregon, yes, sir.

Q. Will you come down to the date of July 20th and state to the jury what transpired with reference to a call for you?

A. Well, I was over to the garage—there was no call at all—and I went over to get an extra tire and he had a vulcanizing plant there. When I got there he hadn't a tube fixed and he said, "You will have to run on that—we are vulcanizing this afternoon." He asked me if I wanted to haul a load from the beach and I told him I did, yes; so in going down with the car the tire went flat and I drove the car to one side and telephoned to Chauncey to bring me another car. He brought me another car down there after I telephoned from the house and I walked around on "L" or "M" Street and walked around the block. Then I loaded this load and started back when I met the officers.

Q. Was that liquor ever in your possession?

A. It was in the car.

(Testimony of Clinton Maelhorn.)

Q. And you were working for Peterson?

A. Yes, sir.

Q. You heard what Mr. Mossman said with reference to some statement made by you: Do you recall making any such statement to Clarence Mossman?

A. I remember talking to him all the way; I don't remember making that particular statement. I may have but I can't recall it.

Mr. RAY.—That is all.

Cross-examination.

(By Mr. HURLEY.)

Q. Who loaded this liquor into the car?

A. Chauncey Peterson did. [41]

Q. And where was he when he loaded it into the car?

A. On the beach at the mouth of Chester Creek.

Q. And who was this man that told you about this load?

A. Billy Hunt. He said there was \$50 in it if I would drive it into the garage.

Q. He didn't tell you whose it was? A. No.

Q. And he sent you after it? A. Yes, sir.

Q. Was there anybody in possession of this liquor when you went to the beach?

A. No, sir. I started down at first alone with the Buick car.

Q. And you don't know who landed it there?

A. No, I don't.

Mr. RAY.—Was it your liquor? A. No, sir.

Q. Was it Mr. Peterson's? A. No, sir.

(Testimony of Clinton Maelhorn.)

Q. You are in the taxi business?

A. I am working for Mr. Peterson.

Q. Do you know whether he has a license for a taxi business?

Mr. HURLEY.—We object to the question as immaterial.

The COURT.—The objection is sustained. Exception allowed.

Mr. RAY.—That is all.

Defendant rests.

Government rests.

Mr. RAY.—Defendants now move the Court for a directed verdict of not guilty on the ground that the testimony introduced is not sufficient in law to justify or warrant the conviction of the defendants or either of them; further, that such testimony [42] was elicited and by the Court permitted to be introduced in evidence over and against the objections of the defendants, and each of them, in that such testimony is based upon an unreasonable search and seizure in contravention to the rights of the defendants, and based upon a search and seizure without warrant or authority in law.

The COURT.—The motion is denied. Exception allowed.

WHEREUPON, after argument by counsel, the Court delivered its instructions to the jury as follows:

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Instructions of Court to Jury.

Gentlemen of the Jury:

The defendants are charged by the complaint in this case with the crime of wilfully having intoxicating liquor in their possession on July 20, 1922, in Knik precinct, within the jurisdiction of this Court. In order to find the defendants, or either of them, guilty of the charge it will be necessary that you find that every essential element thereof is proven; that is, it must be proven that defendants, or one of them, wilfully had intoxicating liquor, to wit, whisky, commonly called white mule, in his possession within the jurisdiction of this Court.
[43]

It is not necessary to find that the offense was committed, if it was committed, on the precise day stated in the complaint; it is sufficient if it was committed within two years prior to the filing of the complaint.

You are instructed that the complaint in this case is a mere accusation or charge against the defendants, and is not of itself any evidence of the defend-

ant's guilt, and no juror should permit himself to be influenced against the defendants because the complaint has been filed against them.

The jury are instructed that the law presumes every defendant in a criminal trial to be innocent until his guilt is proven to the satisfaction of the jury beyond all reasonable doubt. The burden of proving beyond all reasonable doubt every material allegation necessary to establish the defendant's guilt rests upon the prosecution throughout the trial, and the burden of proof never shifts to the defendant. His presumption of innocence is a right guaranteed to him by law and must be given full force and effect by you until you become satisfied from a consideration of all the evidence in the case of his guilt beyond all reasonable doubt. A reasonable doubt is such a doubt as may fairly and naturally arise in your minds after fully and fairly considering all the evidence in the case. It is that state of the case which leaves the minds of the jurors, after comparison and consideration of all the evidence, in such condition that they cannot say they feel an abiding conviction to a moral certainty of the guilt of the defendant. A moral certainty is not an absolute certainty, but such a certainty as excludes every reasonable hypothesis creating a doubt. [44]

It is your duty to give to the testimony of each and all of the witnesses such credit as you consider their testimony justly entitled to receive, and in doing so you should not regard the remarks or expressions of counsel, unless the same are in con-

formity with the facts proven, or are reasonably deducible from such facts and the law as given to you in these instructions.

You are instructed that the evidence is to be estimated not only by its own intrinsic weight, but also according to the testimony which it is within the power of one side to produce and of the other side to contradict and, therefore, if the weaker and less satisfying evidence is produced when it appears, that it was within the power of the party offering the same to produce stronger and more satisfying evidence, such evidence, if so offered, should be viewed with distrust.

In determining the credit you will give a witness, and the weight and value you will attach to his testimony, you should take into consideration the conduct and appearance of the witness upon the witness-stand; his interest, if any, in the result of the trial; his apparent motives; his relation to or feeling for or against the defendant; the probability or lack of it of the testimony given; the opportunity the witness had to observe and to be informed upon the matters concerning which he testifies; and his apparent candor in giving the testimony. You should be slow to believe that any witness is testifying falsely, but should try to reconcile the testimony of all the witnesses so as to give credit to all of the testimony, if possible. In considering the testimony you should employ your everyday knowledge of human affairs and human nature. [45]

You are not bound to find in conformity with the testimony of any number of witnesses which does not produce conviction in your minds, against a less number or against a presumption or other evidence satisfying you.

If you find that any witness has wilfully testified falsely in one part of his testimony, you are at liberty to reject all or any part of his testimony, but you are not bound to do so. You should reject the false part and may give such weight to the remainder as you may think it is entitled to receive.

You are instructed that evidence is of two kinds, direct and circumstantial. Direct evidence is a statement of a witness testifying concerning facts which he claims to know of his own knowledge. Circumstantial evidence is the proving of certain facts and circumstances in a certain case from which the jury may infer other and connected facts which usually and reasonably follow according to the common experience of mankind. Crime may be proven by circumstantial evidence as well as by direct evidence of the witnesses, but the facts and circumstances in evidence should be consistent with each other and with the guilt of the defendant and inconsistent with any reasonable theory of the defendant's innocence. In this case the evidence is nearly all direct evidence of persons claiming to be eye-witnesses. Some of it, however, is of the class known as circumstantial, particularly certain facts testified to by witnesses for the prosecution, which the prosecution claims tends to connect the defend-

ants with the offense charged. Circumstantial evidence is legal and competent in criminal cases and is to be given such [46] weight as the jury may think it is entitled to receive. In considering both direct and circumstantial evidence the jury are entitled to apply to it their own knowledge of the everyday affairs of life and of common human motives and actions.

Possession may be actual or constructive. Actual possession means physical dominion; that is, under immediate physical control. Constructive possession means the right of possession and right of control. A man may have constructive possession of property not in his possession if he has the right to take actual possession at will.

In determining the question of possession in this case, the jury will consider all the testimony—direct and circumstantial. The actual presence of a man near the property involved does not of itself establish either possession or right of possession, but is evidence to be considered in connection with all the other facts in determining whether or not the party charged is in possession, either actual or constructive. Temporary custody is possession if by authority or right.

Under the law of Alaska, mere possession of intoxicating liquor is unlawful and punishable under the provisions of the Alaska bone dry law. It is necessary, however, that the possession be with the knowledge of the fact that the article is intoxicating liquor. It is for you to determine under all the evidence in the case whether the defendants, or

either of them, had the custody of this liquor with knowledge of its character. [47]

You are instructed that a person charged with the commission of a crime shall at his own request, but not otherwise, be deemed a competent witness in his own behalf, the credit to be given to his testimony being left solely with the jury under the instructions of the Court.

In this case the defendant Maelhorn has testified as a witness. The credit to be given to the testimony of this defendant is left solely to you, and you should give it the same fair and candid consideration you do the testimony of other witnesses in the case, but you are entitled to take into consideration the interest of this defendant in the result of the trial as affecting or bearing upon his credibility.

The defendant Peterson in this trial has waived his right to become a witness in his own defense. It is his privilege, given him by law, to testify or not as he may see fit. The law provides that his waiver of the right to testify shall not create any presumption against him.

You are instructed that the failure of the defendant Peterson to testify in his own behalf is not to be considered by you in any way whatever in considering the question of his guilt or innocence. You are to consider that solely upon the evidence in the case. The presumption of innocence is carried with the defendants throughout the trial.

You are to consider the guilt or innocence of the defendants separately and render a separate ver-

dict as to each. You may find one of them guilty and the other not guilty.

E. E. RITCHIE,
Judge. [48]

Mr. RAY.—The defendants except to the instructions of the Court—to that portion of the instructions with reference to circumstantial evidence—as follows, as not applicable to the case in bar:

“You are instructed that evidence is of two kinds, direct and circumstantial. Direct evidence is a statement of a witness testifying concerning facts which he claims to know of his own knowledge. Circumstantial evidence is proving of certain facts and circumstances in a certain case from which the jury may infer other and connected facts which usually and reasonably follow according to the common experience of mankind. Crime may be proven by circumstantial evidence as well as by direct evidence of the witnesses, but the facts and circumstances in evidence should be consistent with each other and with the guilt of the defendant, and inconsistent with any reasonable theory of the defendant’s innocence. In this case the evidence is nearly all direct evidence of persons claiming to be eye-witnesses; some of it, however, is of the class known as circumstantial, particularly certain facts testified to by witnesses for the prosecution which the prosecution claims tends to connect the defendant with the offense charged. Circumstantial evidence is legal and compe-

tent in criminal cases and is to be given such weight as the jury may think it is entitled to receive. In considering both direct and circumstantial evidence the jury are entitled to apply to it their own knowledge of the everyday affairs of life and of common human motives and actions.

Exception allowed.

Mr. RAY.—The defendant also excepts to the following instruction:

“In determining the question of possession in this case, the jury will consider all the testimony—direct and circumstantial. The actual presence of a man near the property involved does not of itself establish either possession or right of possession, but is evidence to be considered in connection with all the other facts in determining whether or not the party charged is in possession, either actual or constructive. Temporary custody is possession if by authority or right.”

Exception allowed.

WHEREUPON the jury retired to deliberate on their verdict.

Case closed. [49]

I do certify that I am the official court reporter for the Third Division, Territory of Alaska; that as such I reported the proceedings had at the trial of the above-entitled cause, to wit: United States of America versus C. F. Peterson and Clinton Maelhorn, No. 874—Criminal; that the foregoing transcript is a full, true and correct transcript of the

evidence introduced and the proceedings had at the trial of said cause.

Dated at Valdez, Alaska, this sixteenth day of January, 1923.

JOHN W. LENAHA. [50]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Verdict.

We, the jury duly empanelled and sworn in the above-entitled cause, do find defendant C. F. Peterson guilty; and we do find the defendant Clinton Maelhorn guilty, as charged in the complaint. And recommend that leniency of the Court be shown Clinton Mealhorn.

B. A. GRTER,
Foreman.

Entered in Court Journal A-2, page 362.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 7, 1922. W. N. Cuddy, Clerk. By S. N. Scott, Deputy. [51]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Motion in Arrest of Judgment.

Come now the above-named defendants, and each of them, by their counsel of record, and pray that no judgment be rendered against them, or either of them, upon the verdict of "guilty," heretofore returned into court in said cause as to both said defendants, in that the facts stated in the complaint upon which said defendants were placed on trial do not constitute a crime, and are insufficiently pleaded to so constitute a crime; and, that the above-entitled court was and is without jurisdiction to place on trial, except upon indictment by grand jury, said defendants, and each of them, for the commission of an offense which may be punishable by imprisonment for a term of more than one year.

Dated at Anchorage, Alaska, December 7th, 1922.

C. F. PETERSON,

CLINTON MAELHORN,

Defendants.

By L. V. RAY,

Their Counsel of Record.

Receipt of copy of the original of the above motion in arrest of judgment acknowledged this 7th day of December, 1922.

SHERMAN DUGGAN,
United States Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 7, 1922. W. N. Cuddy, Clerk. By S. N. Scott, Deputy. [52]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

M. O.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Order Denying Motion in Arrest of Judgment.

This matter came on for hearing on motion in arrest of judgment of L. V. Ray, Esq., counsel for the defendants; the defendants being present in person and represented by their counsel, L. V. Ray, Esq.; the plaintiff being represented by Sherman Duggan, Esq., United States Attorney.

WHEREUPON, after argument, the motion was denied. [53]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Judgment and Sentence.

This cause coming on to be heard before this Court on the 15th day of December A. D. 1922, and the plaintiff, United States of America, appearing and being represented by Sherman Duggan, United States Attorney, and the defendants being personally present in open court, in the custody of the United States Marshal, and appearing by and being represented by their attorneys, L. V. Ray and Leopold David, and the Court having fixed this date as the time to pass sentence and pronounce judgment upon defendants, C. F. Peterson and Clinton Maelhorn, in this action, and it appearing to the Court.

That defendants C. F. Peterson and Clinton Maelhorn, were convicted of the crime of having intoxicating liquor in their possession in violation of the act of Congress, approved February 14th, 1917, known as the Alaska Dry Law, in the Court of the United States Commissioner for Knik Precinct, Third Division, Territory of Alaska, and thereupon appealed said cause to this Court.

That on the 5th day of December, 1922, at the November 10th, 1922, term of the above-entitled court, held at Anchorage, Third Division, Territory of Alaska, defendants being personally present in court and being represented by L. V. Ray and L. David, their attorneys, and Sherman Duggan, United States Attorney, appearing for and representing plaintiff, and defendants then and there having been duly tried by a jury, and having been by said jury in said Court duly and regularly convicted, and the Court finding in accordance with said verdict of said jury that defendants are guilty and this being the time and place set and agreed upon for sentence and judgment in the above-entitled action, upon said verdict of guilty against said defendant, and defendants at [54] this time being present in person and by *his* attorneys, L. V. Ray and Leopold David, and being asked by the Court if they had any reason to give or suggest to the Court why judgment should not be pronounced upon them according to law, and defendants then and there showing no valid reason or excuse in that behalf, and the Court being fully advised,—

IT IS ORDERED AND ADJUDGED that as punishment for the offense above set forth you, C. F. Peterson, one of said defendants, be imprisoned for the term of nine (9) months in the federal jail at Anchorage, Third Division, Territory of Alaska, and that in addition thereto you pay a fine in the sum of nine hundred and no/100 (\$900.00) Dollars, and in default of the payment of such fine you serve a term in the above-named

federal jail not to exceed one (1) day for each \$2.00 of said fine unpaid, and that no costs be taxed in this action.

AND IT IS ORDERED AND ADJUDGED that as punishment for the offense above set forth you, Clinton Maelhorn, one of said defendants, be imprisoned for the term of five (5) months in the federal jail at Anchorage, Third Division, Territory of Alaska, and that in addition thereto you pay a fine in the sum of Five Hundred and no/100 (\$500.00) Dollars, and in default of the payment of such fine you serve a term in the above-named federal jail not to exceed one (1) day for each \$2.00 of said fine unpaid, and that no costs be taxed in this action.

And the United States marshal is hereby ordered and instructed, in pursuance of the judgment herein rendered, to take said C. F. Peterson and Clinton Maelhorn, defendants, into custody, in execution of said sentence. A certified copy of this judgment is a sufficient commitment to the United States Marshal, Third Division, Territory of Alaska, to take said defendants into custody and to carry out said judgment and sentence.

Done in open court at Anchorage Alaska, this 15th day of December, 1922.

E. E. RITCHIE,
Judge of District Court. [55]

In the District Court for the Territory of Alaska,
Third Division.

No. 874.

UNITED STATES OF AMERICA,

Plaintiff,

against

C. F. PETERSON,

Defendant.

Bail Bond Pending Writ of Error.

We, C. F. Peterson, Z. J. Loussac and P. O. Sundberg, jointly and severally, acknowledge ourselves indebted to the United States of America, in the sum of \$2,000, lawful money of the United States of America, to be levied on our, and each of our goods, chattels, lands and tenements, upon this condition.

WHEREAS, the said C. F. Peterson has sued out a Writ of Error from the judgment of the District Court for the Territory of Alaska, Third Division, in the case in said court wherein the United States of America was plaintiff and the said C. F. Peterson is defendant, for a review of said judgment in the United States Circuit Court of Appeals for the Ninth Circuit.

NOW, if the said C. F. Peterson shall appear and surrender himself in the District Court for the Territory of Alaska, Third Division, on and after filing in said District Court of the mandate of the said Circuit Court of Appeals, and from time to

time thereafter as he may be required to answer any further proceedings, and abide by and perform any judgment or order which may be had or rendered therein in this case, and shall abide by and perform any judgment or order which may be rendered in said United States Circuit Court of Appeals for the Ninth Circuit, and not depart from said District Court without leave thereof, then this obligation shall be void; otherwise to remain in full force and virtue.

WITNESS our hands and seals this 28th day of December, 1922.

C. F. PETERSON. (Seal) [56]

P. O. SUNDBERG. (Seal)

Z. J. LOUSSAC. (Seal)

Taken and approved this 29th day of December, 1922, before me,

E. E. RITCHIE,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 29, 1922. W. N. Cuddy, Clerk. By S. N. Scott, Deputy.

United States of America,
Territory of Alaska,—ss.

We, Z. J. Loussac and P. O. Sundberg, sureties on the foregoing bond, each for self and not one for the other, being severally duly sworn, deposes and says that he is a resident of the Territory of Alaska; that he is not a counselor or attorney at law, commissioner, marshal, clerk or any other officer of any court; that he is worth the amount of \$2,000.00 over

and above all his just debts and liabilities and exclusive of property exempt from execution.

P. O. SUNDBERG.

Z. J. LOUSSAC.

Subscribed and sworn to before me this 29th day of December, 1922.

E. E. RITCHIE,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 29, 1922. W. N. Cuddy, Clerk. By S. N. Scott, Deputy.
[57]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON and CLINTON MAELHORN,
Defendants.

Order Settling and Certifying Bill of Exceptions.

This cause having come on for hearing upon the motion of the defendant, C. F. Peterson, for an order settling and certifying his bill of exceptions to be used upon his writ of error about to be prosecuted to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment and sentence made and pronounced herein on the 15th day of December, 1922, against the defendant C. F. Peter-

son, upon a verdict of guilty of wilfully and unlawfully having in his possession, jointly with his co-defendant Clinton Maelhorn, intoxicating liquor in violation of the provisions of the Act of Congress, approved February 14th, 1917, commonly known as the Alaska Dry Law, said offense being alleged in the complaint thereof as of the 20th day of July, 1922; and, it appearing that said defendant Peterson filing herein his proposed bill of exceptions, served the same upon counsel for the United States, giving due notice of the date and place of settlement of said bill of exceptions, and no amendments or objections to said bill of exceptions having been made by the United States; and, the undersigned Judge of said District Court having inspected and considered the same, and found such bill of exceptions to contain all the papers, pleadings, proceedings, and exceptions necessary to a determination of the questions involved and raised by the defendant Peterson's exceptions,—

It is therefore ordered that the foregoing bill of exceptions be and the same is hereby allowed, approved and settled, and that the same shall constitute defendant Peterson's bill of exceptions upon the prosecution of his writ of error in said cause.
[58]

And it is further ordered that this order shall be deemed and is taken as a certificate of the undersigned Judge of this court that each bill of exceptions consists of all the papers, pleadings, testimony, proceedings and exceptions filed, presented, had and done in said cause, and all of the matters upon

which said judgment of December 15th, 1922, is based, and of all matters and things necessary or proper for the determination of the questions involved herein or raised or attempted to be raised by said writ of error.

And I further certify that this cause was tried at the November, 1922, Anchorage term of this court; that said term is still alive having been adjourned by order of Court made December 30, 1922, to March 5, 1923; and the bill of exceptions herein is settled and signed this day at the Valdez term of this court because court is now in session at Valdez and not at Anchorage.

Done at Valdez, Alaska, this 1st day of March, 1923.

E. E. RITCHIE,
District Judge.

Entered Court Journal No. 13, page No. 801.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. March 1. 1923. W. N. Cuddy, Clerk. By S. I. Hemple, Deputy.
[59]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA

vs.

C. F. PETERSON,

Defendant.

Assignment of Errors.

Comes now the defendant, C. F. Peterson, who is the sole defendant prosecuting the writ of error in this cause, and makes and files the following assignments of error on which the defendant will rely in the prosecution of his writ of error herein:

First. The Court erred in permitting the witness Mossman to testify, over and against the objection and exception of the defendant, in that said Court was without jurisdiction to try said defendant upon the complaint filed in said cause, as shown by the bill of exceptions, as follows:

Mr. RAY.—The defendants object to the introduction of the testimony of the witness for the following reasons:

1. The complaint on which the defendants are sought to be placed on trial is signed “C. W. Mossman,” not in any official capacity. An indictment to be good would have to be signed “Sherman Duggan, United States Attorney.”

2. The Court is without jurisdiction to try these defendants in that it is in violation of the rights of the defendants as given by the fifth amendment to the Constitution of the United States providing that no person shall be held to answer for a capital or otherwise infamous crime unless by indictment of a grand jury.

3. That the Congress of the United States is without authority to pass legislation making the possession of intoxicating liquor an offense.

4. That the offense sought to be charged in this complaint is not set forth with sufficient certainty to apprise these defendants to which charge they must answer, and the complaint does not state sufficient facts in law to constitute a valid complaint.

The COURT.—The objection is overruled.

Defendants allowed an exception. [60]

Second. The Court erred in permitting the witness Mossman to testify, over and against the objection and exception of the defendant, as follows:

Q. Just go ahead and state what was done there when you met the defendants at that time.

Mr. RAY.—At the time you intercepted the defendants, as you stated in the car, had you a search-warrant?

Mr. HURLEY.—We object to the question, if the Court please, as incompetent.

The COURT.—Objection overruled.

The WITNESS.—I had no search warrant, no sir.

Mr. RAY.—Have any other process of any kind?

The WITNESS.—No, sir.

Mr. RAY.—The defendants object to the further introduction of the testimony of this witness and any evidence obtained by him as the same was procured in violation of the fourth and fifth amendments to the Constitution of the United States providing that there shall be no illegal and unreasonable searches and seizures, and that a defendant shall not be com-

pelled to give incriminating testimony or further incriminating testimony against himself.

The COURT.—The objection is overruled. Exception allowed.

Third. The Court erred in permitting the witness Mossman to testify as to the ownership of a certain car or automobile, over and against the objection and exception of the defendant, as follows:

Q. And whose car was it?

Mr. RAY.—We object to the question as calling for a conclusion of the witness.

The COURT.—He may answer if he knows.

The objection is overruled. Exception allowed.

Fourth. The Court erred in permitting the witness Mossman to testify, over and against the objection and exception of the defendant, as follows:

Q. And is the contents of this bowl that you have poured from this keg part of the liquor that you found in the car on that day? [61]

Mr. RAY.—We object to the question. The liquor is not yet in evidence; and we object to the conduct of the prosecuting officer in thus making an attempt to introduce certain testimony before the Court has formerly passed upon and admitted such testimony.

Mr. HURLEY.—We will withdraw the question.

The COURT.—I think it was an oversight.

Q. I wish at that time to offer the—

Mr. RAY.—We except to the statement of the Court as not being sufficient under the circumstances which have arisen to correct the

error; and we object to the introduction of the kegs and contents for the reason that it is apparent on the testimony of the officer that he acted without process of any kind.

The COURT.—The objection is overruled. Exception allowed.

Fifth. The Court erred in admitting in evidence, over the objection and exception of the defendant a certain bowl and its contents, as follows:

Mr. HURLEY.—I want to offer this bowl and its contents in evidence, taken from Exhibit “A.”

Mr. RAY.—Objection on the same grounds. It was an unlawful seizure. Defendant also objects to the jurors acting as witnesses in that certain liquid has been circulated among them by the assistant United States Attorney.

The COURT.—The objection will be overruled. The bowl will be admitted in evidence and marked. Exception allowed.

Sixth. The Court erred in denying the motion of the defendants to strike the testimony of the witness Mossman, to the denial of which motion exception was taken and allowed by the Court, as follows:

Mr. RAY.—The defendants move to strike the testimony of the witness Mossman as to any facts testified by him on the ground that the said officer acted without process of law, either a search-warrant or warrant of arrest for these defendants, in violation of the constitution rights provided in the fourth and fifth amendments to the Constitution of the United States,

and was in effect an illegal search and illegal seizure.

The COURT.—The motion is denied. Exception allowed.

Seventh. The Court erred in permitting the witness Watson [62] to testify, over and against the objection and exception of the defendant, as follows:

Mr. RAY.—Did you have a search-warrant?

A. No, sir.

Mr. RAY.—Any other warrant?

A. No, sir.

Mr. RAY.—We object to the introduction of testimony of this witness now sought to be elicited, on the ground that the same is in violation of the rights of the defendant as prescribed in the fourth and fifth amendments to the Constitution of the United States.

The COURT.—The objection is overruled. Exception allowed.

Eighth. The Court erred in denying the motion of the defendants to strike the testimony of the witness Watson, to the denial of which motion exception was taken and allowed by the Court, as follows:

Mr. RAY.—Defendants move to strike the testimony of the witness Watson on the ground that the testimony thus given is based upon a search without warrant of arrest or search-warrant, in contravention of the rights of the defendant established by the fourth and fifth amendments to the Constitution of the United States.

The COURT.—The motion is denied. Exception allowed.

Ninth. The Court erred in permitting the introduction of the testimony of the witness Mossman, recalled for further examination, as to conversations had with the defendant Peterson or the defendant Maelhorn at or about the time of the arrest, to the admission of which testimony the defendant objected and duly excepted to, as follows:

Mr. RAY.—Well, we object to the introduction of any statements made by the defendant while under arrest.

The COURT.—The objection is overruled. Exception allowed. [63]

Tenth. The Court erred in permitting the witness Green to testify, over and against the objection and exception of the defendants, as follows:

Mr. RAY.—Had you a search-warrant to search an automobile?

The WITNESS.—No, sir.

Mr. RAY.—Defendants object to the introduction of the testimony sought to be elicited from this witness on the ground that it was obtained without authority in law and in violation of the rights of these defendants as established by the fourth and fifth amendments to the Constitution of the United States.

The COURT.—The objection is overruled. Exception allowed.

Eleventh. The Court erred in denying the motion of the defendants to strike the testimony of the witness Green, to the denial of which motion exception was taken and allowed by the Court, as follows:

Mr. RAY.—I ask that the witness Green's testimony be stricken on the ground that the same is based on a seizure without search-warrant in contravention to the rights guaranteed to these defendants by the fourth and fifth amendments to the Constitution of the United States.

The COURT.—The motion is denied. Exception allowed.

Twelfth. The Court erred in denying the motion of the defendants for an instructed verdict of not guilty, to the denial of which motion the defendants excepted, as follows:

Mr. RAY.—Defendants now move the Court for a directed verdict of not guilty on the ground that the testimony introduced is not sufficient in law to justify or warrant the conviction of the defendants or either of them; further, that such testimony was elicited, and by the Court permitted to be introduced in evidence over and against the objections of the defendants, and each of them, in that such testimony based upon an unreasonable search and seizure in contravention to the rights of the defendants, and based upon a search and seizure without warrant or authority in law.

The COURT.—The motion is denied. Exception allowed. [64]

the defendant in arrest of judgment, as follows:

“Come now the above-named defendants, and each of them, by their counsel of record, and pray that no judgment be rendered against

them, or either of them, upon the verdict of 'guilty' heretofore returned into court in said cause as to both said defendants, in that the facts stated in the complaint upon which said defendants were placed on trial do not constitute a crime, and are insufficiently pleaded to so constitute a crime; and, that the above-entitled Court was and is without jurisdiction to place on trial, except upon indictment by grand jury, said defendants, and each of them, for the commission of an offense which may be punishable by imprisonment for a term of more than one year.

Dated at Anchorage, Alaska, December 7, 1922."

Fourteenth. The Court erred in entering judgment in said cause against the defendant Peterson.

WHEREFORE, the defendant, C. F. Peterson, as plaintiff in error, prays that the judgment and sentence of the District Court for the Territory of Alaska, Third Division, made and pronounced on the 15th day of December, 1922, may be reversed, set aside and vacated.

L. V. RAY,

Attorney for Plaintiff in Error.

Service of the foregoing assignment of errors, by receipt of copy thereof, admitted this 2d day of November, 1923.

SHERMAN DUGGAN,

U. S. Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 3, 1923. W. N. Cuddy, Clerk. [65]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

against

C. F. PETERSON,

Defendant.

Petition on Writ of Error.

Comes now the above-named defendant C. F. Peterson, and says: That on the 15th day of December, 1922, this Court entered judgment against the defendant upon a verdict of guilty of the offense of having intoxicating liquor in his possession, July 20th, 1922, in violation of the Act of Congress approved February 14th, 1917, known as "An Act to Prohibit the Manufacture and Sale of Alcoholic Liquors in the Territory of Alaska and for other purposes" (said act being commonly known as the Alaska Bone Dry Law), directing the imprisonment of said defendant for the period of nine months in the federal jail at Anchorage, Alaska, and the payment of a fine in the sum of \$900.00; and further that C. F. Peterson be imprisoned in the federal jail at Anchorage, Alaska, until such fine be satisfied; said imprisonment not to exceed one (1) day

for every Two Dollars (\$2.00) of such fine; and that said C. F. Peterson serve one day for every Two Dollars of such fine of \$900.00 that he shall fail or refuse to pay and being in addition to said imprisonment of nine (9) months. [66]

That in said judgment, and in the proceedings had prior thereto, certain errors were committed to the prejudice of the defendant, all of which more fully appear in the assignment of errors, which is filed with this petition.

WHEREFORE the defendant prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the errors so complained of, and that the transcript of the record, testimony, proceedings, and papers in this cause, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may be proper therein.

L. V. RAY,

Attorney for Defendant.

Service of the above petition for writ of error admitted this 3d day of November, 1923, by receipt of copy thereof.

SHERMAN DUGGAN,

United States Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 3, 1923. W. N. Cuddy, Clerk. [67]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

against

C. F. PETERSON,

Defendant.

Order Allowing Writ of Error.

On this 3d day of November, A. D. 1923, came the defendant herein, by his attorney, and filed and presented to the Court his petition praying for the allowance of a writ of error and the assignment of errors intended to be urged by him; praying, also, that a transcript of the record, testimony, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises;

And, it appearing to the Court, the said defendant has heretofore filed herein a duly approved appearance or bail bond, and also a duly approved cost bond.

NOW, THEREFORE, in consideration of the premises, and the Court being fully advised,—

IT IS ORDERED that the aforesaid writ of error be, and the same is hereby allowed. [68]

IT IS FURTHER ORDERED that the duly approved bond heretofore filed in this cause by the defendant shall operate as a supersedeas, or stay of sentence.

And IT IS FURTHER ORDERED that a transcript of the record, testimony, files and proceedings in this cause, save as modified by the order of this Court relative to certain of the original exhibits introduced in evidence in said cause, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

E. E. RITCHIE,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 3, 1923. W. N. Cuddy, Clerk. [69]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff,
against

C. F. PETERSON,
Defendant.

Undertaking for Costs.

A judgment having been given on the 15th day of December, 1922, whereby the above-named defendant, C. F. Peterson, after having been found

guilty, of the offense of having intoxicating liquor in his possession on July 20, 1922, in violation of the Act of Congress approved February 14th, 1917, known as "An Act to Prohibit the Manufacture and Sale of Alcoholic Liquors in the Territory of Alaska and for other purposes" and sentenced to pay a fine of Nine Hundred Dollars (\$900.00) and also that said defendant be imprisoned for the period of nine months in the federal jail at Anchorage, Alaska, and said defendant having appealed from said sentence and judgment to the United States Circuit Court of Appeals for the Ninth Circuit,

We, P. O. Sundberg, of Anchorage, Alaska, by occupation merchant and Z. J. Loussac, of Anchorage, Alaska, by occupation druggist, hereby undertake that the above-named defendant, C. F. Peterson, shall pay all costs that may be awarded against him on appeal not exceeding the sum of \$250.00.

IN WITNESS WHEREOF, we have hereunto set our hands this 20th day of October, 1923.

C. F. PETERSON,
Principal.

P. O. SUNDBERG.
Z. J. LOUSSAC.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 3, 1923. W. N. Cuddy, Clerk. [70]

United States of America,
Territory of Alaska,—ss.

P. O. Sundberg and Z. J. Loussac, being severally first duly sworn on oath, each for self and not

one for the other, depose and say: That they are the persons who signed the within undertaking; that they are not attorneys or counselors at law, U. S. Commissioner, U. S. Marshal, Deputy U. S. Marshal, Clerk of the District Court or other officer of any court; that they are worth the sum specified in the foregoing undertaking as the penalty thereof over and above all their just debts and liabilities and exclusive of property exempt from execution.

P. O. SUNDBERG.

Z. J. LOUSSAC.

Subscribed and sworn to before me this 20th day of October, 1923.

LEOPOLD DAVID,

Notary Public for Alaska, Residing at Anchorage,
Alaska.

My commission expires Sept. 24, 1925.

The foregoing bond approved this 3d day of November, 1923.

E. E. RITCHIE,

District Judge. [71].

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
against

C. F. PETERSON,
Defendant and Plaintiff in Error.

Writ of Error.

The United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States, to the Honorable E. E. RITCHIE, Judge of the District Court for the Territory of Alaska, Third Division, GREETING:

Because in the records and proceedings, as also in the rendition of the judgment, of a plea which is in said District Court before you, between the United States of America, plaintiff, and C. F. Peterson, defendant, manifest error hath happened to the great damage of the said defendant C. F. Peterson, as is stated in his petition herein, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, within thirty days from the date of this writ, so that you have the same in said court [72] at San Francisco, in the State of California, in said Circuit, to be then and there held; that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 3d day of November, in the year of our Lord one thousand nine hundred and twenty-three, and in the 148th year of the Independence of the United States of America.

Allowed by:

E. E. RITCHIE,

Judge of the District Court for the Territory of
Alaska, Third Division.

Attest:

W. N. CUDDY,

Clerk of the District Court for the Territory of
Alaska, Third Division.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 3, 1923.
W. N. Cuddy, Clerk. [73]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff and Defendant in Error,
against

C. F. PETERSON,

Defendant and Plaintiff in Error.

Citation on Writ of Error (Original).

United States of America,
Territory of Alaska,—ss.

The United States of America to the Attorney
General of the United States, and to Honorable
SHERMAN DUGGAN, United States
Attorney for the Territory of Alaska, Third
Division, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco, in the State of California within thirty days from the date of this writing, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Third Division, wherein C. F. Peterson is plaintiff in error, and the United States of America is defendant in error, and show cause, if any there be, why the judgment in said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 3d day of November in the year of our Lord one thousand nine hundred and twenty-three and in the 148th year of the Independence of the United States of America.

E. E. RITCHIE,
District Judge, Territory of Alaska.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 3, 1923. W. N. Cuddy, Clerk. [74]

United States of America,
Territory of Alaska,
Third Division,—ss.

I, the undersigned clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the attached is a full, true and correct copy of the original citation on writ of error in the case of the United States of America against C. F. Peterson, Cause No. 874—Criminal as the same appears on file and of record in my office.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the said court at Valdez, Alaska, this 3d day of November, 1923.

[Seal]

W. N. CUDDY,
Clerk.

By _____,
Deputy. [74½]

In the District Court for the Territory of Alaska,
Third Division.

No. 874—CRIMINAL.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
against

C. F. PETERSON,
Defendant and Plaintiff in Error.

Citation on Writ of Error (Copy).

United States of America,

Territory of Alaska,—ss.

The United States of America to the Attorney General of the United States, and to Honorable SHERMAN DUGGAN, United States Attorney for the Territory of Alaska, Third Division, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held in the city of San Francisco, in the State of California, within thirty days from the date of this writing, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Third Division, wherein C. F. Peterson is plaintiff in error, and the United States of America is defendant in error, and show cause, if any there be, why the judgment in said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 3d day of November, in the year of our Lord one thousand nine hundred and twenty-three, and in the 148th year of the Independence of the United States of America.

E. E. RITCHIE,

District Judge, Territory of Alaska.

Service acknowledged this 3d day of November, 1923, by receipt of a certified copy of citation.

SHERMAN DUGGAN,

U. S. Attorney. [75]

In the District Court for the Territory of Alaska,
Third Division.

**Certificate of Clerk U. S. District Court to Trans-
script of Record.**

United States of America,
Territory of Alaska,
Third Division,—ss.

I, W. N. Cuddy, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the above and foregoing, and hereto annexed 75 pages, numbered from 1 to 75, inclusive, are a full, true and correct transcript of records and files of *of* the proceedings in the above-entitled cause, as the same appears on the records and files in my office; that this transcript is made in accordance with the defendant's praecipe on file herein.

I FURTHER CERTIFY that the foregoing transcript has been prepared, examined and certified to by me on behalf of the defendant, plaintiff in error, and that the costs thereof, amounting to \$18.00 have been paid to me by L. V. Ray, Esq., attorney for the defendant and plaintiff in error.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 3d day of November, A. D. 1923.

[Seal]

W. N. CUDDY,
Clerk. [76]

[Endorsed]: No. 4146. United States Circuit Court of Appeals for the Ninth Circuit. C. F. Peterson, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Third Division.

Filed November 17, 1923.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

